

JUL 24 2006**NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****HUGO MONTOYA SIGMOND,****Defendant - Appellant.****No. 04-50350****D.C. No. CR-01-00114-BTM****MEMORANDUM***

**Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding**

Submitted May 15, 2006**

Before: B. FLETCHER, TROTT and CALLAHAN, Circuit Judges.

Hugo Montoya Sigmond appeals from the sentence imposed upon him following the revocation of supervised release. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Montoya Sigmond contends that the revocation of supervised release and sentence imposed thereafter must be reversed because the supervised release statute violates the Constitution. We reject this contention because neither the imposition of nor the revocation of supervised release violates the Sixth Amendment. *See United States v. Huerta-Pimental*, 445 F.3d 1220 (9th Cir. 2006).

Montoya Sigmond also contends that the district court erred by delegating to the probation officer the authority to determine the number of drug tests to which he must submit and which substance abuse treatment program he would have to attend. To the extent that Montoya Sigmond challenges the conditions of supervised release imposed by the district court on July 19, 2004, we conclude that the district court erred only in not determining the maximum number of non-treatment drug tests to which Montoya Sigmond must submit while on supervised release. *See United States v. Stephens*, 424 F.3d 876, 884 (9th Cir. 2005).

Accordingly, we vacate the condition of supervised release stating that Montoya Sigmond will be subjected to “at least two periodic drug tests” and remand to the district court to determine the maximum number of drug tests to which Montoya Sigmond must submit while on supervised release.

AFFIRMED in part and SENTENCE VACATED in part and REMANDED.